

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
TRADEMARK TRIAL AND APPEAL BOARD

WALTERS GARDENS, INC.	)	
	)	
Opposer,	)	Opposition No. 91153755
vs.	)	
	)	
PRIDE OF PLACE PLANTS, INC.	)	Mark: PIILU
	)	Serial No: 76/201/447
Applicant.	)	Filed: January 29, 2001
	)	
	)	
	)	

To: Gary J. Nelson  
CHRISTIE, PARKER & HALE, LLP  
Attorneys for Applicant  
350 W. Colorado Blvd., Suite 500  
P.O. Box 7068  
Pasadena, California 91109-7068  
(626) 795-9900

**OPPOSER'S OPPOSITION TO APPLICANT'S MOTION TO SUSPEND PROCEEDING AND  
EMERGENCY TELEPHONE HEARING**

Pride of Place Plant's ("PoPP") motion for suspension of proceeding should be denied. The facts put forth in PoPP's motion are inconsistent with the actual correspondence in this case. If the witness is unable to travel to California, then Walters Gardens has no objection to traveling to Mr. Sorenson to receive his testimony.

The notice of deposition of Mr. Sorenson was mailed to Walters Gardens the afternoon of October 6, 2004, the same day counsel for PoPP contends they received notice Mr. Sorenson was unable to attend. *See* Exhibit A. *See also* PoPP's Motion to Suspend Proceedings, page 1. On October 8, 2004 at 8:06 a.m. eastern time, Walters Gardens asked PoPP counsel for confirmation the deposition would go forward as non-refundable airline tickets were going to be purchased. *See* Exhibit B. On October 11, 2004, 5 days after knowing Mr. Sorenson was unable to attend, counsel for PoPP confirmed that "Mr. Sorenson has indicated he will be here in Pasadena on Friday, October 15, 2004" and that a court reporter had been arranged. *Id.* Walters Gardens again communicated with PoPP counsel acknowledging the confirmation and asked for

hotel recommendations. Pride of Place Plants provided the recommendation at 5:42 p.m. eastern time on October 11, 2004.

Pride of Place Plants acknowledges they knew on October 6, 2004 that Mr. Sorenson was not going to attend the deposition scheduled for October 15, 2004. Given that fact, why was counsel for Walters Gardens deceived over the next 5 days that the deposition was going forward? Instead of giving notice of cancellation, counsel for PoPP continued to mislead opposer's counsel up through the end of the business day on October 11, 2004 (7:30 p.m. eastern time).

Walters Gardens argues the unavailability of one witness out of many is an insufficient basis for postponing these proceedings. The testimony of PoPP's other witnesses can take place while Mr. Sorenson recovers. In the event Mr. Sorenson's condition is unchanged, Walters Gardens has already indicated a willingness to travel to Mr. Sorenson to eliminate the need for him to travel. Dr. Wetzer's letter only states that Mr. Sorenson is not in a position to travel. His statement does not indicate that Mr. Sorenson is unconscious, cannot speak or is otherwise incompetent to testify.

The facts presented by Pride of Place Plants are inconsistent with the facts as presented here. The events actually suggest the construction of a facade in hopes of delaying this matter. Rather than delay this proceeding any further, Walters Gardens requests that PoPP continue with the taking of testimony from its other witnesses and that the testimony of Mr. Sorenson take place at or near his residence in Canada.

MILLER, JOHNSON, SNELL & CUMMISKEY, P.L.C.  
Attorneys for Opposer Walters Gardens, Inc.

Dated: October 28, 2004

By  \_\_\_\_\_

Barry C. Kane

Business Address:

250 Monroe Avenue, N.W., Suite 800  
PO Box 306  
Grand Rapids, Michigan 49501-0306  
Telephone: (616) 831-1700

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
TRADEMARK TRIAL AND APPEAL BOARD

WALTERS GARDENS, INC.

Opposer,

v.

PRIDE OF PLACE PLANTS, INC.

Applicant.

Opposition No. 91153755

OCT 11 2004

NOTICE OF TESTIMONIAL  
DEPOSITION

PLEASE TAKE NOTICE THAT Applicant Pride of Place Plants, Inc. ("PoPP"), by its undersigned attorneys, will take the testimonial deposition upon oral examination of Rick Sorenson, owner of PoPP, before a notary public or some other officer authorized to administer oaths under law, at the office of Christie, Parker & Hale, LLP, 350 W. Colorado Boulevard, Pasadena, California 91105, on October 15, 2004, commencing at 10:00 a.m. and continuing from day to day thereafter until completed.

You are invited to attend.

Respectfully submitted,

CHRISTIE, PARKER & HALE, LLP

By

Gary J. Nelson

Gary J. Nelson

Attorneys for Opposer

P.O. Box 7068

Pasadena, California 91109-7068

626/795-9900

Date

10/6/04

EXHIBIT

tabbies

A

**CERTIFICATE OF SERVICE**

I certify that on October 6, 2004, the foregoing **NOTICE OF TESTIMONIAL DEPOSITION** is being served by mailing a copy thereof by first-class mail addressed to:

Barry C. Kane, Esq.  
MILLER, JOHNSON, SNELL & CUMMISKEY, P.L.C.  
250 Monroe Avenue, N.W., Suite 800  
P.O. Box 306  
Grand Rapids, Michigan 49501-0306

By



Elizabeth B. Lavalley  
Christie, Parker & Hale, LLP  
P.O. Box 7068  
Pasadena, CA 91109-7068

**Kane, Barry C.**

**Subject:** FW: Rick Sorenson Testimony Deposition

-----Original Message-----

**From:** Kane, Barry C.

**Sent:** Tuesday, October 12, 2004 8:37 AM

**To:** Gary Nelson

**Subject:** RE: Rick Sorenson Testimony Deposition

Gary:

Received your notice of cancellation. What happened? I asked for assurances before committing to non-refundable airline tickets.

BK

-----Original Message-----

**From:** Gary Nelson [mailto:Gary.Nelson@cph.com]

**Sent:** Mon 10/11/2004 5:42 PM

**To:** Kane, Barry C.

**Cc:**

**Subject:** RE: Rick Sorenson Testimony Deposition

The Ritz Carlton in Pasadena is nice.

1401 S. Oak Knoll Avenue  
Pasadena, CA  
(626) 568-3900

Gary J. Nelson, Esq.  
Christie, Parker & Hale, LLP  
350 W. Colorado Blvd., Suite 500  
P. O. Box 7068  
Pasadena, CA 91109-7068  
Phone: (626) 795-9900  
Fax: (626) 577-8800  
gary.nelson@cph.com  
<http://www.cph.com>

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-----Original Message-----

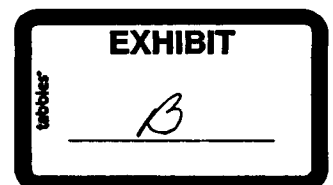
**From:** Kane, Barry C. [mailto:KaneB@mjsc.com]

**Sent:** Monday, October 11, 2004 11:16 AM

**To:** Gary Nelson

**Subject:** RE: Rick Sorenson Testimony Deposition

Thanks Gary. I will be attending. Know of a good hotel close by?



Barry C. Kane

Barry C. Kane

Miller Johnson Snell & Cummiskey, P.L.C.

616.831.1770 (v)

616.988.1770 (f)

[kaneb@mjsc.com](mailto:kaneb@mjsc.com)

An Affiliate of Meritas Firms

<http://www.meritas.org>

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-----Original Message-----

**From:** Gary Nelson [mailto:Gary.Nelson@cph.com]

**Sent:** Monday, October 11, 2004 1:19 PM

**To:** Kane, Barry C.

**Cc:** Brian Brookey

**Subject:** Rick Sorenson Testimony Deposition

Barry:

Mr. Sorenson has indicated he will be here in Pasadena on Friday, October 15, 2004. We have also ordered the Court Reporter. Therefore, unless something strange occurs, we intend to go forward with the deposition.

Gary J. Nelson, Esq.  
Christie, Parker & Hale, LLP  
350 W. Colorado Blvd., Suite 500  
P. O. Box 7068  
Pasadena, CA 91109-7068  
Phone: (626) 795-9900  
Fax: (626) 577-8800  
[gary.nelson@cph.com](mailto:gary.nelson@cph.com)  
<http://www.cph.com>

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-----Original Message-----

**From:** Kane, Barry C. [mailto:KaneB@mjsc.com]  
**Sent:** Friday, October 08, 2004 8:06 AM  
**To:** Gary Nelson  
**Subject:** Rick Sorenson Testimony Deposition

Gary:

Are you firm on the date for Mr. Sorensen? I am about to purchase the airline ticket.  
Regards,

Barry C. Kane  
Barry C. Kane  
Miller Johnson Snell & Cummiskey, P.L.C.  
616.831.1770 (v)  
616.988.1770 (f)  
[kaneb@mjsc.com](mailto:kaneb@mjsc.com)

An Affiliate of Meritas Firms  
<http://www.meritas.org>

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE  
TRADEMARK TRIAL AND APPEAL BOARD**


WALTERS GARDENS, INC.,	)	
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Opposer,	)	OPPOSITION NO.: 91153755
	)	
vs.	)	
	)	
PRIDE OF PLACE PLANTS, INC.,	)	Mark: PIILU
	)	Serial No.: 76,201,447
	)	Filed: January 29, 2001
Applicant.	)	
	)	
	)	
	)	

**PROOF OF SERVICE**

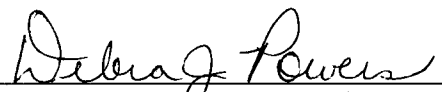
Nicole Fodor, being first duly sworn, deposes and says that on the 29th day of October 2004, she served a copy of the Opposer's Opposition to Applicant's Motion to Suspend Proceeding and Emergency Telephone Hearing upon:

Mr. Gary J. Nelson  
CHRISTIE, PARKER & HALE, LLP  
350 West Colorado Boulevard, Ste. 500  
P.O. Box 7068  
Pasadena, California 91109-7068  
(626)795-9900

via facsimile with confirmation sent by First Class U.S. Mail.

  
\_\_\_\_\_  
Nicole Fodor

Subscribed and sworn to before me  
this 29th day of October 2004.

  
\_\_\_\_\_  
Debra J. Powers, Notary Public  
State of Michigan, County of Kent  
My Commission Expires: 07/07/06  
Acting in the County of Kent



**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE  
TRADEMARK TRIAL AND APPEAL BOARD**


WALTERS GARDENS, INC.,	)	
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Opposer,	)	OPPOSITION NO.: 91153755
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PRIDE OF PLACE PLANTS, INC.,	)	Mark: PIILU
	)	Serial No.: 76,201,447
	)	Filed: January 29, 2001
Applicant.	)	
	)	
	)	
	)	

**CERTIFICATE OF EXPRESS MAIL**

I hereby certify that the attached Opposer's Opposition to Applicant's Motion to Suspend Proceeding and Emergency Telephone Hearing and related papers are being deposited with the United States Postal Service using Express Mail Service, Express Mail Label No. EV 436 430 731 US in an envelope addressed to:

BOX TTAB NO FEE  
Commissioner for Trademarks  
2900 Crystal Drive  
Arlington, VA 22202-3514

on October 29, 2004.

  
\_\_\_\_\_  
Nicole Fodor

Miller, Johnson, Snell & Cummiskey, P. L.C.  
P.O. Box 306  
250 Monroe Avenue, N.W., Suite 800  
Grand Rapids, MI 49501-0306  
(616) 831-1700

TTAB

MILLER, JOHNSON, SNELL & CUMMISKEY,  
Attorneys and Counselors

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616.831.1700

 MERITAS LAW FIRMS WORLDWIDE

October 29, 2004

*Via U.S. Express Mail*

BOX TTAB NO FEE  
Commissioner for Trademarks  
2900 Crystal Drive  
Arlington, VA 22202-3514

Re: *Walters Gardens, Inc. vs. Pride of Place Plants, Inc.*  
Opposition No. 91153755

Serial No. 516901447

To Members of the TTAB Panel:

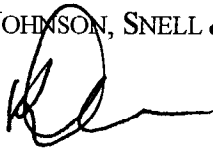
Please find enclosed Opposer's Opposition to Applicant's Motion to Suspend Proceeding and Emergency Telephone Hearing in triplicate, Proof of Service and Certificate of Express Mail for filing in the captioned opposition.

Thank you for your assistance.

Very truly yours,

MILLER, JOHNSON, SNELL & CUMMISKEY, P.L.C.

By

  
Barry C. Kane

BCK/nf

Enclosures

cc: Gary J. Nelson, Esq.

#879835



11-01-2004